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FAX FROM SAGE GEOTECH INC.DATE: 10/29/08TOTAL PAGES 6TO: DANA DEAN
UTAH DIV. OF OIL, GAS & MININGFROM: GARY AHO / OSEC

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Message: Dana, here's the letter that OSEC
recently sent to EPA as it relates
to permitting issues for OSEC's Phase 2
RDED program.

Regards,

Gary Aho

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October 14, 2008

Ms. Carol Rushin
Acting Regional Administrator
U.S. Environmental Protection Agency
1595 Wynkoop St.
Denver CO 80202

Re: White River Oil Shale Mine, Utah

Dear Ms. Rushin:

The purpose of this letter is to advise EPA of the plans of Oil Shale Exploration Company, LLC ("OSEC") for initial work at the White River Mine Site in Utah, on land leased to OSEC by the Bureau of Land Management ("BLM").

Meetings and telephone discussions with your staff on potential regulatory matters have been helpful. We look forward to working with your staff as this project develops into additional phases.

We hope to commence work soon on what OSEC refers to as "Phase 2." This will involve constructing at the site a surface retort pilot plant of limited capacity, processing a limited amount of oil shale, and generating crude oil shale. Part of this phase will include re-opening the existing underground mine, located on the leasehold, which in turn will require removal of about eighteen million gallons of water from the mine. This water has accumulated over the past 15 years or so since the BLM closed the mine.

Air

Because the pilot plant retort will be in operation less than twelve months, we believe that no Title V permit will

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be required. 42 USC 7661b(c); see 40 CFR 71.5(a)(1)(i) and (ii). In a meeting in Denver on October 11, 2006, representatives of your office confirmed that the 12-month permitting requirement means that no Title V permit is required for this pilot plant operation.

At the same meeting we also understood your staff to agree that the project would be exempt from PSD permitting as a pilot project. OSEC believes that when the proposed rulemaking to establish a minor source permitting program for sources in Indian regulatory jurisdiction becomes final, such regulations will provide a permitting option in which OSEC can request a facility-wide permit limit in order to remain below PSD permitting thresholds.

OSEC is committed to installing air emission control systems on the pilot plant equipment during Phase 2. The RD&D Lease with BLM requires OSEC to obtain and comply with all necessary air permits and install, operate and maintain air emission control devices on the retort. OSEC has told BLM and the State of Utah Division of Oil, Gas and Mining ("DOGM") that the retort will be operated so as not to emit more than 100 tons in any 12 month period of any air pollutant regulated by the Clean Air Act. OSEC has also informed DOGM and BLM that OSEC will install emission control devices on the retort which will remove 95% of the emissions of sulfur dioxide, carbon monoxide, and particulate matter.

Accordingly, we do not anticipate filing an application for Clean Air Act permits for Phase 2.

Surface Water Discharges

Reopening the White River Mine requires removal of about eighteen million gallons of water currently in the mine. Water samples were drawn from the mine in March 2008 and the results of that sampling were forwarded to Mr. Gregory Davis of your office.

OSEC plans to dewater the White River Mine pumping the water out and discharging it to a drainage feature which leads to an existing engineered, earthen retention dam, located off of the OSEC leasehold but on federal land managed by BLM. The dam is owned by the BLM and is routinely inspected by the Utah State Engineer's office.

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OSEC does not plan to apply for an EPA NPDES permit for these discharges. Based on guidance from EPA and the Corps of Engineers, OSEC believes that the drainage feature is an ephemeral wash, and not a water of the United States, in the wake of the Rapanos decision.

In discussions with EPA regional personnel we understood that EPA will not be making a jurisdictional determination over whether this wash is or is not a water of the United States. We wish to clarify that in this letter we are not asking EPA to make such a determination. Instead we are providing this letter to advise EPA of OSEC's plans for discharging the mine water.

The following information appears to support a determination of no jurisdiction:

In two separate guidance documents, EPA and the Army Corps of Engineers ("Corps") stated that the government will not assert jurisdiction over "swales, erosional features (e.g., gullies) and small washes characterized by low volume, infrequent, and short duration flow." U.S. Army Corps of Engineers, Jurisdictional Determination Form Instructional Guidebook at 16 (May 30, 2007); see U.S. EPA and U.S. Army Corps of Engineers, "Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States," (June 5, 2007) ("Rapanos Guidance"), Summary of Key Points; Memorandum, March 4, 2008, G. Nakayama, Assistant Administrator for Enforcement and Compliance Assurance, to B. Grumbles, Assistant Administrator for Water, p. 2 (referring to "presumption of non-jurisdiction for . . . intermittent and ephemeral" waters).

The wash and the dam are not on the OSEC leasehold. Instead they are on adjoining federal land, managed by BLM. OSEC has been granted a BLM right-of-way to use both the drainage and the dam.

The wash is normally dry. The channel collects surface runoff during and after precipitation events. Annual rainfall in the area is very low (seven to ten inches on average). Therefore the wash seldom contains any water. Accordingly, it appears to fit the exception for "small washes characterized by low volume, infrequent, and short duration flow," quoted above, from the Corps guidance.

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The dam was constructed by a previous leaseholder in 1982-83. That lease terminated in 1986 and BLM has managed the property since then.

During a recent examination of files related to the former White River Oil Shale Corporation, OSEC located a copy of an NPDES permit. This permit, number UT-0024261, was located in files formerly held by the BLM and now in OSEC's possession, but only recently inventoried. The permit issue date was September 26, 1983. The permit was to be effective 30 days after the receipt date, which, according to a date stamp on the copy was October 8, 1983, unless a request for an evidentiary hearing was submitted within 30 days of the receipt date. No copy of such a request was found during the file examination. The "zero discharge" permit allows for discharge of stormwater, tertiary-treated sanitary waste water, and excess mine water which are all consistent with the permit application. Process water was prohibited from being discharged to the reservoir and process water was defined as water that contacted the retorting process or spent shale.

A White River Shale Oil Corporation memorandum attached to the permit states that the permit is for the runoff retention dam, which OSEC presumes is the same dam currently existing in the wash. The permit describes the receiving waters as an unnamed tributary to the White River.

The earthen dam was designed with a clay core, a cutoff trench, and a grout curtain extending to competent bedrock to prevent underflow. The dam features a concrete-lined spillway to discharge excess runoff if the storage capacity is exceeded. There is a small seepage retention pond located downstream of the dam, although lateral seepage is expected to be minimal. OSEC understands that the dam was designed to provide capacity for a 100-year, 24-hour precipitation event.

Therefore, the wash does not appear to meet the significant nexus test because the dam will prevent virtually all mine discharge water from reaching a traditional navigable water, thus preventing any hydrologic connection to such navigable water. The water retained upstream of the dam is likely to evaporate quickly because the annual pan evaporation rates in the area range from 22 to 34 inches. Moreover, any water that does seep through the dam will be collected in the downstream retention impoundment until it evaporates. Accordingly, there should be no water discharged downstream of the larger dam, thus eliminating any potential hydrologic

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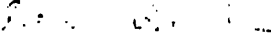
connection with the White River which is approximately one mile below the dam.

Moreover, even if there were such a hydrologic connection, the significant nexus test requires more. There must also be established "a significant effect (more than speculative or insubstantial) on the chemical, physical, and biological integrity of a traditional navigable water." "Questions and Answers for Rapanos and Carabell Decision," at 8 (June 5, 2007) [emphasis added]. OSEC believes that the normal and mine water discharge low flow of the wash, combined with the effect of the dam in preventing downstream flow, precludes the wash from having any aquatic connection with the White River. The wash will not impact downstream spawning or any other aquatic animal habitat or movement; or allow for migration of chemicals, nutrients, seeds, or any other form of water-borne constituents including sediment. Even an assertion that the wash performs some functions - such as creating aquatic habitat or trapping sediments from flowing downstream - is "speculative and insubstantial" due to the extremely low annual precipitation, high evaporation rates, and correspondingly low amount of water naturally received by or retained in the wash.

Finally, although OSEC was not involved in its construction, the dam and the wash appear to be a wholly or primarily man-made water treatment or retention structure for surface water runoff. See 33 CFR 323.2(b) (definition of "lake"), 328.3(a) (excluding waste treatment systems from definition of "waters of the United States").

For the above reasons, OSEC does not plan to submit an application for an NPDES permit to EPA for the discharge of mine water to the nearby ephemeral wash. OSEC has applied to the Utah Division of Oil, Gas, and Mining and to BLM for approvals to reopen the mine, including the dewatering project. OSEC will not discharge the mine water into the wash prior to receiving these authorizations.

We appreciate the time that your staff has taken to review OSEC's plans as well as your attention to this letter.

Sincerely yours,

Kenneth Berlin